

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIHGARH.

Letters Patent Appeal No.1788 of 2016 (O&M)
Date of Decision: 13.02.2017

Dr. Gurmail Singh and another ..Appellants

versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present: Mr. Vineet Chaudhary, Advocate,
for Mr. Arvind Singh, Advocate,
for the appellants.

RAMENDRA JAIN, J.

CM No.3650/LPA of 2016

1. This is an application for condonation of delay of 109 days in re-filing the accompanying appeal.
2. For the reasons set out in the application, which is duly supported by an affidavit, the same is allowed. Consequently, the delay of 109 days in re-filing the appeal is condoned.

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3. Letters Patent Appeal Appeal under Clause X of the Letters Patent has been filed against the judgment dated 09.02.2016 passed by the learned Single Judge, whereby Civil Writ Petition No.26390 of 2013 filed by the appellant-writ petitioners, was dismissed.

4. Briefly stated the facts are that Navyug Cooperative Non-Agriculture Thrift and Agricultural Credit Society Limited, Ambala City-

respondent no.5 (hereinafter referred to as “the Society”), after winding up proceedings under Section 105 of the Haryana Cooperative Society Act, 1984 (hereinafter referred to as “the Act”), an official liquidator was appointed to take over the charge of the society. The society was revived in 2007. A board of Administrators was constituted. One hundred and eight cases were filed before the Assistant Registrar Cooperative Societies (hereinafter called as “ARCS”) for effecting recovery from the borrowers. After due permission, some FIRs were also lodged and some officers of the society were also arrested. The petitioners (appellants herein), being depositors of the society, also filed a petition under Sections 102/103 of the Act claiming that they had paid the amount to Shri Sudhir Bansal (respondent no.6) on behalf of the society, who has misappropriated the same. Consequently, award was passed by the Arbitrator, directing respondent no.6 to make the payment of ₹ 18,50,000/- as principal amount along with interest @ 18% per annum to the appellants and simultaneously, a direction was also issued to the ARCS, Ambala, to execute award under Section 110 of the Act. However, since the said award was passed ex parte on 12.06.2009, therefore, Shri Sudhir Bansal (respondent no.6) challenged the same before the Registrar, Cooperative Societies, Haryana (hereinafter referred to as ‘RCSH’), who, vide order dated 31.03.2011 (Annexure P-12) ordered the Chief Auditor, to decide the matter afresh after granting adequate opportunity of being heard to respondent no.6. The case was heard by the Chief Auditor. In the meanwhile, the petitioner moved an application before the RCSH, who took up the matter again on 03.11.2011 and recalled his earlier order dated 31.03.2011. Respondent no.6 challenged the said order dated 31.03.2011, besides some other earlier orders passed in 2007 or

2008 and 03.11.2011 by way of filing the revision petition under Section 115 of the Act. The Additional Chief Secretary, Haryana, vide order dated 08.10.2013 (Annexure P-9) allowed the revision petition filed by respondent no.6 holding that the RCS had no authority in law to review his own order once having commented upon it in favour of respondent no.6. The Additional Chief Secretary, Haryana, while accepting the revision, directed the parties to appear before the Registrar Cooperative Society on 17.10.2013. Being aggrieved, the petitioners preferred the writ petition, being CWP No. 26390 of 2013, which has been dismissed by the learned Single Judge in the following terms:-

“ When the facts are seen in their totality, respondent no.6 was completely deprived of an opportunity to contest his case since he was in custody and thus oblivious of the proceedings. The RCS remitted the matter back to Chief Auditor for decision afresh with a direction to grant hearing to respondent no.6. This was in complete conformity with the principles of **Audi alteram partem** warranting the adherence to principles of natural justice. It is, thereafter, the RCS fell in grave error by reviewing its own order and deciding the same application which already stood determined. This was totally impermissible in law. If any of the parties had any grievance against the order of the RCS passed earlier on 31.3.2011 remanding the matter for a fresh decision, the same could have been challenged before the appropriate authority in accordance with law but under no circumstances could the same have been reviewed by the very same officer on the same application which already

stood determined. The order being patently erroneous was rightly set aside by the Additional Chief Secretary.

For the aforesaid reasons, I do not find any reason much less or sustainable also to interfere in the impugned order.

The petition, is, therefore, dismissed.”

5. Learned counsel for the appellants contended that the learned Single Judge while passing the impugned order, did not appreciate that the appellants have made a fixed deposit of ₹ 18,50,000/- along with interest @ 18% with the society named as Navyug Cooperative Non-Agriculture Thrift and Agricultural Credit Society Limited, Ambala, through respondent no.6, namely, Shri Sudhir Bansal, who was the President of the Society. The learned Single Judge, while passing the impugned order, also did not appreciate that the appellants had approached the Assistant Registrar, Cooperative Societies, Ambala and submitted an application for releasing the amount of ₹ 18 lac along with interest @ 18% per annum. The learned Single Judge has also ignored this fact that the Additional Registrar-cum-Chief Auditor, vide order dated 12.06.2009 (Annexure P-5), has passed an award of ₹ 18,50,000/- as principal along with interest @ 18% per annum till its realisation in favour of the appellants with the direction to the Assistant Registrar, Cooperative Societies, Ambala, to execute the award. The learned Single Judge, while passing the impugned order, also did not take into consideration this aspect of the matter that Shri Sudhir Bansal (respondent no.6) misappropriated the amount of the appellants by committing fraud with them and various other persons and did not re-pay even a single penny to them despite the aforesaid award passed against him.

6. After giving our thoughtful considerations to the submissions made by learned counsel for the appellants, we find that the present appeal is completely devoid of any merit for the simple reason that nothing adverse has been passed against the appellants, inasmuch as the impugned order dated 09.02.2016 passed by the learned Single Judge is well reasoned. The learned Single Judge, while dismissing the writ petition filed by the petitioners (appellants herein) has taken into consideration the aspect that the Registrar, Cooperative Societies, Haryana, had not dislodged the claim of Dr. Gurmail Singh (appellant no.1 herein) in any manner. Rather, he, vide order dated 03.11.2011 (Annexure P-6), has simply re-called the order dated 31.3.2011 (Annexure P-12) on the ground that he had no authority to review his own earlier order once having commented upon it in favour of respondent no.6 and remanded the matter back to the Chief Auditor for hearing afresh after giving adequate opportunity of being heard.

7 Learned counsel for the appellants could not point out as to the nature of loss much more irreparable, is being suffered by the appellants in case the matter is remitted to the Chief Auditor for hearing afresh giving adequate opportunity of being heard to respondent no.6.

8 In view of what has been recorded hereinabove, we do not find any reason to interfere with the well reasoned judgment dated 09.02.2016 passed by the learned Single Judge. Accordingly, finding no merit in the appeal, it is hereby dismissed.

9 There is a delay of 30 days in filing the appeal. Since the main appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and

the same is left open.

The registry is directed to bring this order to the notice of the respondents so as to avoid any concealment of this order by the appellants.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

13.02.2017
VK

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether reportable | Yes/No |